

# State of New Hampshire DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095 (603) 271-3503 FAX (603) 271-2867



GRJH, Inc. PO Box 728 Sharon, CT 06069

Re: Dolly Madison Country Store

Route 113 Madison, NH NOTICE OF PROPOSED ADMINISTRATIVE FINE AND HEARING No. AF 01-025

**April 23, 2001** 

#### I. Introduction

This This Notice of Proposed Administrative Fine and This Notice of Proposed Administrative Fine an Environmental Services, WaEnvironmental Services, WasteEnvironmental Services, Waste Martoto RSA 146-C:10-a and Env-C 601.05. The Division is proposing that a fine totaling \$1,800 be imposed against GRJH, Inc. for timposed against GRJH, Inc. procedural information. Please read the entire notice carefully.

#### II. Parties

- 1.1. The Department of Environmental Services, Waste Management Division, 1. The administrative administrative agency of administrative agency of the State of New Hampshire, Drive, Concord, NH.
- 2.2. GRJH, Inc. is a New Hampshire corporat2. GRJH, Inc. is a New Hampshire corporation having Sharon, Sharon, CT 06069. GRJH, Inc. is the successor in interest to Peterson PetSharon, CT 06069. Hampshire.

#### III. Summary of Facts and Law Supporting Claim(s)

- 1.1. RSA 146-C authorizes the Department of 1. RSA 146-C authorizes the Department of Enviroundergroundunderground storage tank (UST) facilities. Pursuant to RSA 146-C:9, the Commissioner of DESDES has adopted rules to implement this regulatory program (Env-Wm 1401DES has adopted rules to im 1997,1997, which 1997, which supercede1997, which superceded Env-Ws 411 effective September 17, 1985 and Env-Ws 411 effective November 2, 1990 through April 21, 1997).
- 2.2. RSA 146-C:10-a authorizes the Commissioner of DES to 2. RSA 146-C:10-a authorizes the Commiss to \$2,000 per offense for violations of RSA 146-C, including any rule adopted pursuant thereto. PursuantPursuant to RSA 146-C:10-a, I, the Commissioner has adopted Env-C 607 to ePursuant to RSA schedule of fines for such violations.
- 3.3. GRJH, Inc. is the owner of two 3. GRJH, Inc. is the owner of two ga3. GRJH, Inc. is the owner of Route 113, Madison, NH further identified as UST #0-114529 ( the Facility ).

- 4.4. The Facility is subject to the requirements of RSA 146-C and the 4. The Facility is subject to the requirements of RSA 146-C and the 4.
- 5.5. RSA 15. RSA 146-C:4, I, prohibits any person from operating a UST facility without a pe5. RS operateoperate from the Division operate from the Division. Env-Wm 1401.07(b) required the Division for a permit to operate. Each permit to operate has a five-year term.
- 6.6. The prior permit to operate expired in April 1999. Division records reflect that the current permit to operate for the Facility was not applied for until November 16, 2000.

#### IV. Violations Alleged

1.1. 1. GRJH, Inc. has violated Env-Wm 1401.07(b) by failing to timely apply to the Division for a permit to operate the Facility.

## V. Proposed Administrative Fines

1.1. For the violations identified in IV. 2. above, Env-C 607.02(1. For the violations identified in IV. 2. eacheach calendar month or portion thereof the each calendar month or portion thereof the fee is noteach calendar is seeking a fine of \$1,800 for the 18 calendar months May 1999 through October 2000.

The total fine being sought is \$1,800.

## VI. Hearing, Required Response

GRJH, GRJH, IncGRJH, Inc. has the GRJH, Inc. has the right to a hearing to contest the Division's alleg imposed. A hearing on imposed. A hearing on this mattering on this matter has a.m. in Room C-110 of the DES offices at 6 Hazen Drive in Concord, NH.

PursuantPursuant to Env-C 601.06, GRJH, Pursuant to Env-C 601.06, GRJH, Inc.Pursuant to Env-C 601.06 attention May 18, 2001 using the enclosed colored form as follows:

- 1. If If GRJH, IIf GRJH, Inc. plans to attend the hearing, please have an authorized representative sign the the appearance the appearance (upper pthe appearance (upper portion) and return it to James I Paralegal, at the address noted on the form.
- 2. If If GRJH, Inc. chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lowauthorized representati
- 3. If If GRIf GRJH, Inc. wishes to discuss the possibility of settling the case, pleas If GRJH, Inc. v authorized authorized representative sign the appearance and return it to Mr. Ballentine and call call Mr Ballentine to indicate GRJH, Inc. s interest in settling.

GRJH,GRJH, Inc. is not required to be represented by an attoGRJH, Inc. is not required to be represented represented represented by an attorney, the attorney must file an appearance and, if a hearing is held, represented proposed findings of fact to the person conducting the hearing.

If If GRJH, Inc. wisIf GRJH, Inc. wishes to have a If GRJH, Inc. wishes to have a hearing but is unable toto the hearing as scheduled, GRJH, Inc. must notify Mr. Ballentine at least one week in advanceadvance of the hearing and advance of the hearing and request thadvance of the hearing and request nonotifnotifynotify Mr. Ballentine in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

#### VII. Determination of Liability for Administrative Fines

PursuantPursuant to Env-C 601.09, in order for any fPursuant to Env-C 601.09, in order for any fine to bePurprove, by a preponderance of prove, by a preponderance of the prove, by a preponderance of the evide that that the total amount of the fine sought is the appropriate amount that the total amount of the fine sought is the rulesrules. Proving something by a preponderance of the evidence means that it is **more likemore than not** that the thing sought to be proved is true.

If If If If the Divisio If the Division proves that GRJH, Inc. committed the violation and that the amount o soughtsought is the appropriate amount sought is the appropriate amount under the apsought is the appropriate be imposed, subject to the following:

- \* PursuantPursuant to Env-C 601.09(c), the fine will be reduced by 10% for for each of the circulisted below that GRJH, Inc. proves, by a preport that GRJH, Inc. proves, by a preponderanc t case:
  - 1.1. The violation was a one-time or non-continuing violation, and GRJH, Inc. did not know aboutabout the requirement when the violation occurred, and the violation has not co the violation has reoccurred as of the timereoccurred as of the time of the hearing, a beenbeen corrected, and GRJH, Inc. did not benefit financially, GRJH, Inc. did not benefit financially from the violation.
  - 2.2. At the time the violations were committed, GRJH, Inc. was maki2. At the time the violations were comply with the requirement that was violated.
  - 3.3. G3. GRJH, Inc.3. GRJH, Inc. has no history of non-compliance with the statutes or rules implemed DES or with any permit issued by DES or contract entered into with DES.
  - 4.4. Other information exists wh4. Other information exists which is favorabl4. Other information exists the Division at the time the fine was proposed.

## \*\*\*\*\*IMPORTANT NOTICE\*\*\*\*

The The hearing that has The hearing that has been schThe hearing that has been sched tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, hearing, the Division will present testimohearing, the Division will present testimony committed the violation alleged above and that the fine should becommitted the violation hearing is GRJH, Inc. s opportunity to present testimony to present testimony and the should be committed to present testimony to present testimony and the should be committed to present testimony to present testimony to present testimony and the should be committed to present testimony that the should be committed the violation and/or to the should be committed to present testimony to present testimony that the should be committed the violation and/or to the should be committed to present testimony that the should be committed the violation and/or to the should be committed the violation and the should be committed the violation and the should be committed the violation and the

<u>imposed,imposed, or that the fine sought should be reduced.</u> IfIf GRJH, If GRJH, Inc. evidence, evidence, suevidence, such as pevidence, such as photographs, business records or Inc. believes show that GRJH, Inc. did not commit the violation(s) or that

otherwise support GRJHotherwise support GRJH, Incotherwise support GRJH, Inc. thethe hearing. GRJH, Inc. may also bring witnesses (other people) the hearing. GRJH, Inc. testify on GRJH, Inc. s behalf.

If If GRJH, Inc. wish If GRJH, Inc. wishes to h If GRJH, Inc. wishes to have an informal m Inc. Inc. must contact Mr. Ballentine at (603) 271-6072 to requelnc. must contact Mr. conference.

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InforInformationInformation regarding this proposed fine may be made available to the public via the DEInformationInformation regarding this proposed fine may be made available to the public via the DEInformationInformationInformation regarding this proposed fine may be made available to the public via the DEInformationInformationInformation regarding this proposed fine may be made available to the public via the DEInformationInformatio

Philip J. O'Brien, Ph.D., Director Waste Management Division

Enclosure (NHDES Fact Sheet #CO-2 2000)

cc: Gretchen Rule, DES Enforcement Coordinator Susan Alexant, DES Hearings and Rules Attorney Thomas R. Beaulieu, Chief Lynn A. Woodard, P.E., Supervisor

# \*\*\* RETURN THIS PAGE ONLY \*\*\*

<u>Appearance</u>		
	ill attend the hearing scheduled for Monday, June 18, 2001 at 10:30 a.m. is azen Drive in Concord, NH.	in Room C-110
Signature	Date	-
Name (please print or type):		
Title:		
WAIVER OF HEARING		
administrativeadministrati \$1,800 paid to Treasurer * If you pay by check, draf RSARSA 6:11-a, DES madraft, draft, or money odr	I/we certify that I/we understand my/our right to I/we certify that I/we understand my/our rive fine and that I/we hereby waive those rights. The finadministrative r, State of New Hampshire is enclosed.*  If, or money order that* If you pay by check, draft, or money order that is ray charge a fee in theRSA 6:11-a, DES may charge a fee in the amount raft, or money order or \$25draft, or money order or \$25.00, whichever is the original check draft, or money order.	fine and that Is returned due to in terms of RSA 6:11-a, Di
Signature	Date	-
Name (please print or type):		
Title:		
RETURN THIS PAGE ONLY	TO:	
James Ballentine, DES En Department of Environme	ental Services	

6 Hazen Drive P.O. Box 95 Concord, NH 03302-0095